

Judge Stearns
USDC MA
05-11619

MANDATE
United States Court of Appeals
For the First Circuit

No. 06-1054

DAVID L. FISH JR.,
Plaintiff, Appellant,

v.

MARINE BIOLOGICAL LABORATORY,
Defendant, Appellee.

Before

Selya, Circuit Judge,
Campbell, Senior Circuit Judge,
and Lipez, Circuit Judge.

JUDGMENT

Entered: October 19, 2006

David L. Fish, Jr. appeals from the district court judgment entered on November 7, 2005 that granted the defendant's motion for judgment on the pleadings. We have reviewed the parties' briefs and the record on appeal. We do not consider any material presented in Fish's addendum to his appellate brief that was not presented in the district court as "[o]ur review is limited to the record as it stood before the district court at the time of its ruling." Crawford v. LaMantia, 34 F.3d 28, 31 (1st Cir. 1994); see Fed. R. App. P. 10(a) (reciting that, insofar as pertinent here, the original papers and exhibits filed in the district court constitutes the record on appeal).

We review, de novo, a district court's entry of judgment on the pleadings. Gulf Coast Bank & Trust Co. v. Reder, 355 F.3d 35, 37 (1st Cir. 2004). Upon our de novo review, we affirm essentially for the reasons stated in the district court's order dated November 3, 2005. Fish's arguments on appeal do not persuade us that the

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district court committed either error in the substance of its ruling or abuse of discretion in its manner of disposing of the case. To the extent that the order does not refer to a claim of a discriminatory denial of an opportunity to train for a higher-paying position, any such claim was waived on appeal pursuant to our "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

Affirmed.

By the Court:

Richard Cushing Donovan, Clerk.

**Certified and Issued as Mandate
under Fed. R. App. P. 41.**

Richard Cushing Donovan, Clerk

M. Quersched
Deputy Clerk

Date: Nov. 13 2006

By: MARGARET CARTER
Chief Deputy Clerk.

[cc: David Fish Jr., Jonathan Rosenfeld, Esq.,
Julie Murphy Clinton, Esq.]